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ADRIAN CANIZALEZ

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 ADRIAN CANIZALEZ, individually and
15 on behalf of all others similarly situated,
16 Plaintiff,

17 v.

18 FIT FOODS, LTD., and FIT FOODS
19 DISTRIBUTION, INC., Canadian
20 corporations,

21 Defendants.

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Case No. **'14CV2744 WQHBGS**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

- 1. Violations of California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.***
- 2. Violations of California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.***
- 3. Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.***
- 4. Unjust Enrichment**
- 5. Breach of Express Warranty**

1 Plaintiff Adrian Canizalez (“Plaintiff”), individually and on behalf of himself and
2 all others similarly situated, by his undersigned attorneys, upon personal knowledge as
3 to himself, upon information and belief, and based upon the investigation of his Counsel
4 as to the remaining allegations, alleges as follows:

5 **INTRODUCTION**

6 1. This is a civil class action brought individually by Plaintiff and on behalf
7 of all persons and entities in the United States and the state of California (“Class
8 Members”), who purchased the dietary supplement Mutant Whey Extreme Multi Whey
9 Mega Blend (the “Products”) manufactured by Defendants Fit Foods, Ltd. and Fit
10 Foods Distribution, Inc. (collectively, “Defendant”).

11 2. The whey protein industry is a growing and extremely competitive
12 business environment. The market for protein products “is expected to grow by 62% to
13 reach US\$7.8 billion in 2018.” *See* [http://www.euromonitor.com/sports-nutrition-in-](http://www.euromonitor.com/sports-nutrition-in-the-us/report)
14 [the-us/report](http://www.euromonitor.com/sports-nutrition-in-the-us/report) (last visited Nov. 10, 2014).

15 3. However, the price of wholesale whey protein keeps increasing and is
16 usually purchased for roughly \$15-\$18/kilo, making the profit margins on whey protein
17 powder products very low.

18 4. Defendant designed, manufactured, warranted, advertised, and sold the
19 Products throughout the United States, including in the state of California.

20 5. In an effort to reduce protein-manufacturing costs, Defendant adds cheaper
21 free form amino acids to increase the nitrogen content of the Products’ protein powder.
22 Nitrogen is the “tag” used by a common protein content test to determine the amount of
23 protein in a product; but this is neither a direct measure of the actual protein content in a
24 product nor a measure of the type of nitrogen containing compounds in a product.

25 6. The act of adding non-protein ingredients to fake a higher protein content
26 through a higher nitrogen content is commonly referred to as “protein-spiking”,
27 “nitrogen-spiking” or “amino-spiking.” Such “spiking” was at the center of the 2007
28 pet food scandal, which lead to domestic recalls of pet foods, and the 2008 Chinese

1 milk powder scandal, when melamine, a nitrogen-rich chemical, was added to raw
2 materials to fake high protein contents.

3 7. As a result of Defendant's practices, the consumer is left with products that
4 contain less whey protein than Defendant represented.

5 8. This practice has been condemned by the American Herbal Products
6 Association (AHPA), an organization of dietary supplement manufacturers, which has
7 issued a standard for manufacturers for measuring the True Protein content of their
8 products which:

9 a) Defines protein as “a chain of amino acids connected by peptide
10 bonds” for labeling purposes;

11 b) The use of calculations to include only proteins that are “chains of
12 amino acids connected by peptide bonds; and

13 c) To exclude any “non-protein nitrogen-containing substances” when
14 counting total protein content.

¹⁵ See www.ahpa.org/Default.aspx?tabid=441 (last visited Nov. 10, 2014).

16 9. General Nutrition Centers (“GNC”), one of the largest distributors in the
17 United States of whey protein products, has publicly criticized protein spiking, claiming
18 it to be misleading to consumers. According to GNC, consumers cannot be sure that
19 they are getting 100 percent protein in their products because companies don’t always
20 show how they figure total grams of protein per serving. *See*
21 www.gnclivewell.com/realprotein (last visited Nov. 10, 2014).

22 10. Despite the knowledge that “protein-spiking” is misleading to consumers,
23 Defendant continues to advertise, distribute, label, manufacture, market, and sell the
24 Products in a misleading and deceptive manner in order to increase its sales and
25 maximize its profits.

PARTIES

27 11. During the Class period commencing four years before the date of this
28 filing, class members in California and throughout the United States purchased the

1 Products at numerous brick and mortar and online retail stores. Plaintiff and class
 2 members suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and
 3 misleading practices set forth in this Complaint.

4 12. Plaintiff Adrian Canizalez is a resident of the City of San Diego, California,
 5 and purchased the Products from luckyvitamin.com for his own use during the four years
 6 preceding the filing of this complaint.

7 13. Defendant Fit Foods, Ltd. is incorporated in Canada, with a principal place
 8 of business address at 101-1551 Broadway Street, Port Coquitlam, BC, Canada V3C
 9 6N9.

10 14. Defendant Fit Foods Distribution, Inc. is incorporated in Canada, with a
 11 principal place of business address at 101-1551 Broadway Street, Port Coquitlam, BC,
 12 Canada V3C 6N9.

13 15. Based on information and belief, Defendant Fit Foods Distribution, Inc. is
 14 a wholly owned subsidiary of Defendant Fit Foods, Ltd. Defendant Fit Foods
 15 Distribution, Inc. also has established an address in the United States for the distribution
 16 of the Product within the United States, including the State of California. The United
 17 States physical address of Defendant Fit Foods Distribution, Inc. is 605 Hwy 76, Bldg.
 18 2, White House, TN 37188.

JURISDICTION AND VENUE

20 16. This Court has subject matter jurisdiction over Plaintiff's claims pursuant
 21 to 28 U.S.C. § 1332(d) because the combined claims of the proposed class members
 22 exceed \$5,000,000¹ and because Defendant is a citizen of a different state from the
 23 members of the Classes.

24
 25
 26 ¹ Defendant's Products are sold through numerous different online and brick/mortar
 27 retailers, including GNC, Vitamin Shoppe, and Bodybuilding.com. There are likely
 28 tens of thousands of class members composing the proposed classes with tens of
 millions of dollars spent on the Products due to the far reaching distribution channels
 and high consumer demand for whey protein products.

1 17. This Court has personal jurisdiction over Defendant because it regularly
2 conducts business in this District.

3 18. Venue is proper in this District pursuant to: (1) 28 U.S.C. § 1391(b)(2) in
4 that a substantial part of the events or omissions giving rise to Plaintiff's claims
5 occurred in this District; and (2) 28 U.S.C. § 1391(b)(3) in that Defendant is subject to
6 personal jurisdiction in this District.

FACTUAL ALLEGATIONS

The Differences Between Whey Protein & Free Form Amino Acids

9 19. Whey is a complete protein source, which means it contains all the
10 essential amino acids the human body needs to build protein-based compounds such as
11 muscle tissue, skin, fingernails, hair and enzymes. Daily protein needs depend on one's
12 size, gender and activity levels, although they likely amount to somewhere between 46
13 grams and 56 grams. For elite athletes, daily protein requirements are well over 100
14 grams, a need that is difficult to fulfill with simply ingesting food. Others may also
15 need to supplement their protein intake for reasons of ill health.

16 20. Whey protein powder is especially rich in branched-chain amino acids --
17 leucine, isoleucine and valine -- which are metabolized directly within the muscles as
18 opposed to being processed in the liver first.

19 21. The 2005 dietary reference intake (DRI) guidance from the National
20 Academy of Sciences clearly defines protein as macromolecules with links of amino
21 acids, and does not mention free-form amino acids or creatine. Although amino acids
22 are the building blocks of protein, they do not have the same beneficial effects of whole
23 protein when they are free-form, and not part of an actual protein partly because of the
24 way protein is digested and absorbed by the body. Several studies have shown that
25 protein is absorbed more effectively than free-form amino acids.²

²⁸ See, e.g., Di Pasquale MG. Amino Acids and Proteins for the Athlete: The Anabolic Edge, Second Edition. Boca Raton, FL: CRC Press; 2008:190.

1 22. Accordingly, at least one study was conducted to determine whether the
2 effects of whey protein ingestion on muscle protein accrual are due solely to its
3 constituent essential amino acid content. The study was a comparison of three trial
4 groups. The first provided intact whey protein (whey protein powder). The other two
5 trials provided either the individual essential amino acids (i.e. free-form) or the
6 individual non-essential amino acids found in whey. The researchers determined that
7 whey protein ingestion improves skeletal muscle protein accrual through mechanisms
8 that are beyond those attributed to its essential amino acid content.³

9 23. Yet another study found that “the lack of recovery after immobilization-
10 induced atrophy during ageing is due to an ‘anabolic resistance’ of protein synthesis to
11 amino acids during rehabilitation.” The study’s results “highlight a novel approach to
12 induce muscle mass recovery following atrophy in the elderly by giving soluble milk
13 protein or high protein diets.”⁴

14 24. Thus, one review study concluded that, “the bound form of an EAA
15 [essential amino acid] may be more efficiently utilized than when delivered in its free-
16 form.”⁵

Defendant's Misleading Labeling of Mutant Whey

18 25. Defendant prominently features “whey protein,” the name of the
19 ingredient sought by millions of American consumers, in the very name of the
20 product, “Mutant Whey Extreme Multi Whey Mega Blend.” Defendants also represent

³ Katsanos C, et al. Whey protein ingestion in elderly results in greater muscle protein accrual than ingestion of its constituent essential amino acid content. Nutr. Res. Oct. 2008; 28(10):651-658.

⁴ Magne H, et al. Contrarily to whey and high protein diets, dietary free leucine supplementation cannot reverse the lack of recovery of muscle mass after prolonged immobilization during ageing. J. Physiol. Apr 15, 2012; 590(Pt 8): 2035-2049.

⁵ Terada T, Inui K. Peptide transporters: structure, function, regulation and application for drug delivery. Curr Drug Metab. 2004;5:85-94.

on the front of the Product label that it contains “44 grams of whey protein per serving”⁶ and “Includes 17 grams of BCAA’s and Glutamine”:



⁶ Defendants’ front of the label indicates that 2 scoops of the Product is the serving size.

1 26. Defendant represents the Products to contain 22 grams of protein per scoop
 2 (or 44 grams per serving based on the front label recommendation) in the Supplement
 3 Facts section of the Products' label:

Supplement Facts	
Serving Size 1 Scoop (36g)	
Servings Per Container About 63	
Amount Per Serving	%Daily Value*
Calories	150
Calories from Fat	30
Total Fat	3.5g
Saturated Fat	2g
Trans Fat	0g
Cholesterol	90mg
Sodium	80mg
Potassium	180mg
Total Carbohydrates	7g
Dietary Fiber	<1g
Sugars	2g
Protein	22g
Vitamin A	0%
Vitamin C	0%
Calcium	10%
Iron	0%
Proprietary Blend 35g	
†	
MUTANT EXTREME MULTI WHEY Mega Blend	
NitroSerum™ (Unique Membrane Filtered Whey Protein Concentrate / Phospholipid Complex), Ultra-Filtered and Dia-Filtered Whey Protein Concentrates, Cross Flow Micro-Filtered Whey Protein Isolate, ActiNOS® Whey Protein Hydrolysate	
EAA/Volumizing Amino Acids	
Taurine, L-Threonine, L-Glycine, Glutamine Peptides (from Wheat), Micronized L-Leucine	
Sport Oil Complex	
MCT Oil Powder (50% Coconut Oil in a base of Corn Syrup Solids, Sodium Caseinate, Dipotassium Phosphate; Contains 2% or less of Sucrose, Mono & Diglycerides, Silicon Dioxide, Sodium Silicoaluminato, Polysorbate 80, Tetrasodium Pyrophosphate, Soy Lecithin), Soybean Powder, Sunflower Seed Oil	
Dispersion Control Complex	
Maltodextrin, Inulin, Whole Oat Powder, Xanthan Gum, Carboxymethyl Cellulose	
* Percent Daily Values are based on a 2,000 calorie diet.	
† Daily Value not established.	

25 **OTHER INGREDIENTS:** RED BEET POWDER, CITRIC ACID,
 26 NATURAL AND ARTIFICIAL FLAVORS, SILICON DIOXIDE, SODIUM
 27 CHLORIDE, POTASSIUM CITRATE, ACEFULFAME POTASSIUM,
 28 SUCRALOSE, CINNAMON, SOYA LECITHIN.

25 **CONTAINS:** MILK, WHEAT, SOY, OAT, CORN, TREE NUT (COCONUT),
 26 SUNFLOWER SEED AND CINNAMON INGREDIENTS; PRODUCED ON
 27 MACHINERY THAT ALSO HANDLES EGG, FISH, CRUSTACEAN
 28 SHELLFISH, TREE NUTS, PEANUTS, SULPHITES - THIS PRODUCT
 MAY INADVERTENTLY CONTAIN ANY OF THOSE INGREDIENTS.
 PROPORTIONS INDICATED ARE SUBJECT TO CHANGE.

1 27. However, Defendant's claimed total protein count of 44 grams of
 2 protein per serving is not exclusively derived from whey protein but also includes,
 3 for the purposes of "protein-spiking," several free form amino acids, including Alanine,
 4 Glycine, Threonine, and Taurine.

5 28. Once these "protein spiking" agents are removed from the formula of
 6 analysis, and the "bound" amino acid count is determined, the true content of whey
 7 protein in the Products can be determined.

8 29. After scientific testing of the Products, the actual total content of whey
 9 protein per two-scoop serving is approximately 32.576 grams (as calculated from the
 10 total bonded amino acids),⁷ as opposed to the 44 grams per serving claimed by
 11 Defendant for their "whey protein" product. *See Exhibit A.*

12 30. The representations that the Products contain the 44 grams of protein per
 13 serving (two scoops) as disclosed in the "Supplement Facts" on the back of the package,
 14 along with the "44 grams of whey protein per serving" representations on the front of the
 15 package, are material and false and/or likely to mislead a reasonable consumer when, in
 16 fact, the Products contain no more than 32.576 grams of whey protein per serving.

17 31. Although the back labels of the Product mentions *some* free form amino
 18 acids, by name, such as L-Glycine, L-Threonine, and Taurine, Defendant does not
 19 explain that these ingredients make up a significant portion of the claimed protein
 20 content. Rather, by claiming the Products contain "44 grams of whey protein per
 21 serving" and representing the protein content without revealing the spiking, Defendant
 22 purposefully misleads the consumer into thinking that the entire claimed protein content
 23 is whey protein.

24 32. The FDCA prohibits this type of misleading labeling in food:
 25 "The labeling of a food which contains two or more ingredients
 26 may be misleading by reason (among other reasons) of the

27
 28 ⁷ This multiplies the Exhibit A test results by two, based on the 2-scoop, or 72-gram,
 serving recommendation on the Products' front label.

1 designation of such food in such labeling by a name which
2 includes or suggests the name of one or more but not all such
3 ingredients, even though the names of all such ingredients are
4 stated elsewhere in the labeling.”

5 21 C.F.R. § 101.18(b)

6 33. In violation of 21 C.F.R. § 101.18(b), Defendant misleads consumers by
7 referencing whey protein, including in the name of the Products, but never disclosing
8 the limited amount of whey protein that the Products actually deliver or disclosing that
9 the Products’ protein content is only fractionally whey protein.

10 34. A reasonable consumer looking at the name of the Product and the
11 claimed protein content is misled into thinking that the grams of protein per serving
12 claimed by Defendant is derived exclusively from whey.

13 35. This false and misleading product name, the false and misleading claim
14 “44 grams of whey protein per serving,” and the Supplement Facts section, taken
15 together, misled Plaintiff and reasonable consumers into believing that the protein
16 content of the Products is derived solely from whey protein.

17 36. Plaintiff and Class Members were in fact misled by Defendant’s
18 representations regarding the true nature of the protein content and value.

19 37. The difference between the products promised and the Products sold is
20 significant. The amount of actual protein provided, and the measure of protein per
21 serving, has real impact on the benefits provided to consumers by the Products, and the
22 actual value of the Products.

23 **Defendant’s False and Misleading Claims Regarding the Amount of Glutamine
24 and Branched Chain Amino Acids in the Products**

25 38. The Products’ labels claim that the Products contains 17 grams of L-
26 Glutamine and the Branched Chain Amino Acids L-Leucine, L-Valine, and L-
27 Isoleucine (“BCAA’s”). However, scientific testing revealed that the Products only
28 contain 7.356 grams of BCAAs per two scoops and zero L-Glutamine. *See Exhibit A.*

1 39. The FDA promulgated regulations for compliance with the FDCA and
 2 DSHEA at 21 C.F.R. 101, *et seq.* These regulations require all ingredients to be listed
 3 on the label of dietary supplements sold to the public. 21 C.F.R. 101.4.

4 40. Defendant's false and misleading claims contained herein are in violation
 5 of 21 C.F.R. § 101.18(b), making the Products misbranded.

6 41. Defendant's deceptive statements violate 21 U.S.C. § 343(a)(1), which
 7 deems food (including nutritional supplements) misbranded when the label contains a
 8 statement that is "false or misleading in any particular."

9 42. California prohibits the misbranding of food in a way that parallels the
 10 FDCA through the "Sherman Law", Cal. Health & Saf. Code § 109875, *et seq.* The
 11 Sherman Law provides that food is misbranded "if its labeling is false or misleading in
 12 any particular." *Id.*

13 43. The Sherman Law explicitly incorporates by reference "[a]ll food labeling
 14 regulations and any amendments to those regulations adopted pursuant to the FDCA,"
 15 as the food labeling regulations of California Cal. Health & Saf. Code, § 110100, subd.
 16 (a).

17 44. Further, as explained above, Defendant's claims are misleading to
 18 consumers in violation of 21 U.S.C. § 343, which states, "A food shall be deemed to be
 19 misbranded . . . [i]f its labeling is false or misleading in any particular."

20 45. The introduction of misbranded food into interstate commerce is prohibited
 21 under the FDCA and all state parallel statutes cited in this Class Action Complaint.

22 46. Plaintiff and Class Members would not have purchased the Products, or
 23 would have not paid as much for the Products had they known the truth about the
 24 mislabeled and falsely advertised Products.

CLASS ACTION ALLEGATIONS

25 47. Plaintiff brings this action individually and as representatives of all those
 26 similarly situated pursuant to Rule 23 of the Fed. R. Civ. P. on behalf of the class and
 27 subclass ("the Classes"). The Classes are defined as follows:

1 **National Class:** All persons in the United States who
2 purchased the Products at any time during the four years before
3 the date of filing of this Complaint to the present.

4 **California Subclass:** All persons in the State of California
5 who purchased the Products at any time during the four years
6 before the date of filing of this Complaint to the present.

7 48. Excluded from the Classes are Defendant, any entity in which Defendant
8 has a controlling interest or which has a controlling interest in Defendant, and
9 Defendant's legal representatives, assignees, and successors. Also excluded are the
10 judge to whom this case is assigned, any member of the judge's immediate family, and
11 the courtroom staff.

12 49. The Classes are so numerous that joinder of all members is impracticable.
13 On information and belief, the Classes have more than 10,000 members. Moreover, the
14 disposition of the claims of the Classes in a single action will provide substantial
15 benefits to all parties and the Court.

16 50. There are numerous questions of law and fact common to Plaintiff and
17 members of the Classes. These common questions of law and fact include, but are not
18 limited to, the following:

- 19 a. The true nature of the protein content in the Products;
- 20 b. Whether the marketing, advertising, packaging, labeling, and other
21 promotional materials for the Products are deceptive;
- 22 c. Whether Defendant's actions violate California's Unfair
23 Competition Law, Business and Professions Code § 17200, *et seq.*;
- 24 d. Whether Defendant's actions violate California's False Advertising
25 Law, Business and Professions Code § 17500, *et seq.*;
- 26 e. Whether Defendant's actions violate California's Consumers
27 Legal Remedies Act, Civil Code § 1750, *et seq.*;

1 f. Whether Defendant was unjustly enriched at the expense of the
2 Plaintiff and Class Members; and

3 g. Whether Defendant breached an express warranty to Plaintiff.

4 51. Plaintiff's claims are typical of the claims of the Classes. Plaintiff's
5 claims, like the claims of the Classes, arise out of the same common course of conduct
6 by Defendant and are based on the same legal and remedial theories.

7 52. Plaintiff will fairly and adequately protect the interests of the Classes.
8 Plaintiff has retained competent and capable attorneys with significant experience in
9 complex and class action litigation, including consumer class actions. Plaintiff and
10 their counsel are committed to prosecuting this action vigorously on behalf of the
11 Classes and have the financial resources to do so. Neither Plaintiff nor their counsel has
12 interests that are contrary to or that conflict with those of the proposed Classes.

13 53. Defendant has engaged in a common course of conduct toward Plaintiff
14 and members of the Classes. The common issues arising from this conduct that affect
15 Plaintiffs and members of the Classes predominate over any individual issues.
16 Adjudication of these common issues in a single action has important and desirable
17 advantages of judicial economy.

18 54. A class action is the superior method for the fair and efficient adjudication
19 of this controversy. Class-wide relief is necessary to compel Defendant to keep such
20 adulterated and misbranded products out of the market and to compensate those who
21 have misled into purchase of the Products. The interests of individual members of the
22 Classes in individually controlling the prosecution of separate claims against Defendant
23 are small because the damages in an individual action are small. Management of these
24 claims is likely to present significantly fewer difficulties than are presented in many
25 class claims because Defendant acted or failed to act on grounds generally applicable to
26 the Classes. Class treatment is superior to multiple individual suits or piecemeal
27 litigation because it conserves judicial resources, promotes consistency and efficiency
28

1 of adjudication, provides a forum for small claimants, and deters illegal activities. There
2 will be no significant difficulty in the management of this case as a class action.

3 55. Defendant has acted on grounds generally applicable to the Classes,
4 thereby making final injunctive relief and corresponding declaratory relief with respect
5 to the Class appropriate on a class wide basis.

FIRST CAUSE OF ACTION

Violation of the Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et. seq.* **(On Behalf of the California Subclass)**

9 56. Plaintiff incorporates all preceding factual allegations as if fully set forth
10 herein.

11 57. Plaintiff and each member of the Class is a “Consumer” as that term is
12 defined by Cal. Civ. Code § 1761(d).

13 58. The Products are a “Good” as that term is defined by Cal. Civ. Code §
14 1761(a).

15 || 59. Defendant is a “Person” as defined by Cal. Civ. Code § 1761(c).

16 60. The transaction(s) involved here are “Transaction(s)” as defined by Cal.
17 Civ. Code § 1761(e).

18 61. Plaintiff and members of the Class are Consumers who purchased the
19 Products for personal use within the applicable statute of limitations period.

20 62. Plaintiff has standing to pursue this cause of action because Plaintiff has
21 suffered injury-in-fact and has lost money or property as a result of Defendant's actions
22 as set forth here.

23 63. Plaintiff and Class members purchased the Products in reliance on
24 Defendant's labeling and marketing claims.

25 64. Defendant's practices constitute violations of Cal. Civ. Code § 1770 in at
26 least the following respects:

(a) in violation of Section 1770(a)(2), Defendant misrepresented the source of the Products' protein as whey, when, in fact, they are "spiked" with free form

1 amino acids;

2 (b) in violation of Section 1770(a)(5), Defendant represented that the
3 Products have characteristics and benefits (whey protein per serving) that they do not
4 have (because they contain less whey protein per serving than indicated);

5 (c) in violation of Section 1770(a)(7), Defendant represented that the
6 Products are of a particular standard, quality, or grade (whey protein per serving), when
7 they are of another (containing less whey protein per serving than indicated);

8 (d) in violation of Section 1770(a)(9), Defendant has advertised the
9 Products as containing a certain amount of whey protein per serving with the intent not
10 to sell them as advertised (containing less whey protein per serving than indicated); and

11 (e) in violation of Section 1770(a)(16), Defendant has represented that
12 the Products were supplied in accordance with previous representations (amount of
13 whey protein per serving), when in fact they were not (because they contain less whey
14 protein per serving than indicated).

15 65. Defendant knew or should have known that their representations of fact are
16 material and likely to mislead consumers.

17 66. Defendant's practices, acts, and course of conduct in marketing and selling
18 the Products are likely to mislead a reasonable consumer to his or her detriment. Like
19 Plaintiff, members of the Class would not have purchased the Products had they known
20 the true amount of whey protein in the Products.

21 67. Plaintiff and members of the Class have been directly and proximately
22 damaged by Defendants' actions.

23 68. In conjunction with filing this Complaint, Plaintiff's Counsel mailed to
24 Defendant, by certified mail, return receipt requested, the written notice required by
25 Civil Code §1782(a). Should Defendant fail to respond within thirty days, Plaintiff will
26 amend to seek damages under the Consumers Legal Remedies Act.

27 69. Defendant has engaged in, and continues to engage in, business practices
28 in violation of the Consumers Legal Remedies Act, Civ. Code §1750, et seq. by

1 continuing to make false and misleading representations on their labeling of the
2 Products.

3 These business practices are misleading and/or likely to mislead consumers
4 and should be enjoined.

5 **SECOND CAUSE OF ACTION**

6 **Violation of the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.***
7 **(On Behalf of the California Subclass)**

8 Plaintiff incorporates all preceding factual allegations as if fully set forth
9 herein.

10 Plaintiff and the Class have standing to pursue a cause of action for false
11 advertising under Cal. Bus. & Prof. Code §17500, *et seq.*, because Plaintiff and
12 members of the Class have suffered an injury-in-fact and lost money as a result of
13 Defendant's actions as set forth herein.

14 Defendant labeled, advertised, marketed, and otherwise disseminated
15 misleading information to the public through the product labels.

16 Defendant continues to disseminate such statements.

17 Defendant's statements are misleading.

18 Defendant knows that these statements are misleading, or could have
19 discovered their misleading nature with the exercise of reasonable care.

20 Plaintiff and Class members relied on Defendant's marketing and labeling.

21 Defendant's actions violate Cal. Bus. & Prof. Code § 17500, *et seq.*

22 As a direct and proximate result of Defendant's actions, as set forth herein,
23 Defendant has received ill-gotten gains and/or profits, including but not limited to
24 money from Plaintiff and Class members who paid for the Products. Therefore,
25 Defendant has been unjustly enriched.

26 Plaintiff and Class members seek injunctive relief, restitution, and
27 disgorgement of Defendant's ill-gotten gains as provided for by Cal. Bus. & Prof. Code
28 § 17535.

1 81. Plaintiff and Class members seek injunctive relief to compel Defendant
2 from continuing to engage in these wrongful practices in the future. No other adequate
3 remedy at law exists. If an injunction is not ordered, Plaintiff and Class members will
4 suffer irreparable harm and/or injury.

THIRD CAUSE OF ACTION

Violation of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
(On Behalf of the California Subclass Members)

8 82. Plaintiff incorporates all preceding factual allegations as if fully set forth
9 herein.

10 83. Plaintiff and the Class have standing to pursue a cause of action for false
11 advertising under Cal. Bus. & Prof. Code § 17200, *et seq.*, because Plaintiff and
12 members of the Class have suffered an injury-in-fact and lost money as a result of
13 Defendant's actions as set forth herein.

14 84. Defendant's actions as described herein constitute unfair competition
15 within the meaning of Cal. Bus. & Prof. Code § 17200, in that Defendant has engaged
16 in deceptive business practices by falsely advertising the content of whey protein in the
17 Products.

18 85. Defendant's actions as described herein constitute unfair competition
19 within the meaning of Cal. Bus. & Prof. Code § 17200, in that Defendant has engaged
20 in unlawful, unfair and deceptive business practices by deceiving consumers and
21 violating California's Sherman Food Drug & Cosmetic Act and California's Consumer
22 Legal Remedies Act.

23 86. Defendant's actions as described herein constitute unfair competition
24 within the meaning of Cal. Bus. & Prof. Code § 17200, on the additional grounds that
25 Defendant has failed to properly label the Products in accordance with 21 C.F.R. § 101,
26 *et seq.*

27 87. Defendant's actions also constitute unfair competition within the meaning
28 of Cal. Bus. & Prof. Code §17200, in that Defendant has made unfair, deceptive, untrue

1 or misleading statements in advertising mediums, including the labels, in violation of
2 Cal. Bus. & Prof. Code § 17500.

3 88. Defendant's actions have caused economic injury to Plaintiff and Class
4 members. Plaintiff and Class members would not have purchased the Products had they
5 known the true nature of the whey protein content.

6 89. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and Class members
7 seek an injunction enjoining Defendant from continuing to market, advertise, and sell
8 the Products without complying with federal and state law and to prevent Defendant
9 from continuing to engage in unfair competition or any other act prohibited by law.

10 90. Plaintiff and Class members also seek an order that requires Defendant to
11 make full restitution and disgorgement of their ill-gotten gains of all money wrongfully
12 obtained from Plaintiff and Class members as permitted by Cal. Bus. & Prof. Code §
13 17203.

FOURTH CAUSE OF ACTION

Unjust Enrichment

(On Behalf of the National Class and the California Subclass)

17 108. Plaintiff incorporates all preceding factual allegations as if fully set forth
18 herein.

19 109. Plaintiff and Class Members conferred benefits on Defendant by
20 purchasing the Products.

21 110. Defendant has been unjustly enriched in retaining the revenues derived
22 from Plaintiff and Class Members' purchase of the Products. Retention of those monies
23 under these circumstances is unjust and inequitable because Defendant's labeling of the
24 Products was misleading to consumers, which caused injuries to Plaintiff and Class
25 Members because they would have not purchased the Products, or would not have paid
26 as much for them, had they known the true facts.

27 111. Because Defendant's retention of the non-gratuitous benefits conferred on
28 them by Plaintiff and Class Members is unjust and inequitable, Defendant must pay

1 restitution to Plaintiff and the Class Members for their unjust enrichment, as ordered by
2 the Court.

3 **FIFTH CAUSE OF ACTION**

4 **Breach of Express Warranty**

5 **(On Behalf of the National Class and the California Subclass)**

6 112. Plaintiff incorporates all preceding factual allegations as if fully set forth
7 herein.

8 113. Plaintiff and each member of the Class formed a contract with Defendant
9 at the time Plaintiff and the other Class members purchased the Products. The terms of
10 the contract include the promises and affirmations of fact made by Defendant on the
11 Products' packaging, as described above. These promises constitute express warranties
12 and became part of the basis of bargain, and are part of the standardized contract
13 between Plaintiff and the members of the Class and Defendant.

14 114. Defendant purports through its advertising, labeling, marketing and
15 packaging to create an express warranty that the Product contained "44 grams of whey
16 protein per serving" protein.

17 115. Plaintiff and the Class performed all conditions precedent to Defendant's
18 liability under this contract when they purchased the Products.

19 116. Defendant breached express warranties about the Product and its qualities
20 because Defendant's statements about the Product were false and the Product does not
21 conform to Defendant's affirmations and promises described above. Plaintiff and the
22 Class Members would not have purchased the Products had they known the true nature
23 of the Products' ingredients and what the Products did and did not contain.

24 117. As a result of Defendant's breach of warranty, Plaintiff and Class
25 Members have been damaged in the amount of the purchase price of the Products and
26 any consequential damages resulting from the purchases.

PRAYER FOR RELIEF

Plaintiff requests for the following relief:

- A. Certification of the proposed National Class;
 - B. Certification of the proposed California Subclass;
 - D. Appointment of Plaintiff as class representative;
 - E. Appointment of the undersigned counsel as counsel for the Classes;
 - F. A declaration that Defendant's actions complained of herein violate the
of California consumer protection statutes;
 - G. A declaration that Defendant was unjustly enriched;
 - H. A declaration that Defendant breached an express warranty to Plaintiff and
ass;
 - I. An order that enjoins Defendant from engaging in the unlawful conduct set
herein;
 - J. An order that compels Defendant to conduct corrective advertising;
 - K. An award to Plaintiff and the Classes of attorneys' fees and costs, as
wed by law and/or equity;
 - L. Leave to amend this Complaint to conform to the evidence presented at
and
 - M. Orders granting such other and further relief as the Court deems necessary,
and proper.

JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

Dated: November 19, 2014

Respectfully submitted,
AHDOOT & WOLFSON, PC

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Counsel for Plaintiff,
Adrian Canizalez

AFFIDAVIT OF TINA WOLFSON

I, Tina Wolfson, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff Adrian Canizalez (“Plaintiff”) in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research and personal knowledge, Defendant Fit Foods, Ltd. and Fit Foods Distribution, Inc. (collectively, “Defendant”) do business within the County of San Diego and Plaintiff purchased Defendant’s products within the County of San Diego, as alleged in the Class Action Complaint.

I declare under penalty of perjury under the laws of the United States and the State of California this 19th day of November, 2014 in West Hollywood, California that the foregoing is true and correct.

Tina Wolfson